

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:NCA:SAC:GL-800518-00

MAMartin

date: MAR 01 2000

to: Chief, Special Procedures Branch, Northern California District,  
Attn: Corwin Fong, Special Procedures Advisor

from: Associate District Counsel, Northern California District,  
Sacramento

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subject: Your Request for Advice re the Issuance of CDP Notices to [REDACTED]  
[REDACTED] (SSN: [REDACTED]) and [REDACTED] (EIN: [REDACTED])  
[REDACTED]

This is in response to your request for advice dated January 18, 2000.

**ISSUES**

- (1) A notice of alter ego, nominee, or transferee lien was filed in [REDACTED] with respect to the tax liabilities of [REDACTED]. All of such liabilities were included in Notices of Federal Tax Lien (NFTL) filed in the same county against [REDACTED] prior to January 19, 1999.
  - a. Was [REDACTED] entitled to a Form 3172 Collection Due Process Hearing Notice (CDP Notice) after the filing of the notice of alter ego lien in [REDACTED]?
  - b. If [REDACTED] was not entitled to a CDP Notice, was he nevertheless entitled to a Form 3171 Notice of Additional Federal Tax Lien Filing?
- (2) A notice of alter ego, nominee, or transferee lien was filed in [REDACTED] with respect to the tax liabilities of [REDACTED]. All of such liabilities were included in NFTLs filed in the same county against [REDACTED] prior to January 19, 1999, with the exception of the 1120 liability for the taxable year ended [REDACTED].
  - a. With respect to which liabilities was [REDACTED] entitled to a CDP Notice after the filing of the notice of alter ego lien in [REDACTED]?

- b. If the Service did not issue a CDP Notice, did the Service's failure to send the CDP Notice void the alter ego lien?
- c. Should the Service withdraw the notice of alter ego lien and then refile it?
- d. If the Service did not issue a CDP Notice, should the Service now send one?
- e. Which liabilities should be shown on the CDP Notice that the Service will now issue to [REDACTED]?
- f. With respect to which liabilities was [REDACTED] [REDACTED] entitled to a Form 3171 Notice of Additional Federal Tax Lien Filing?
- g. If the Service did not issue a Form 3171, should the Service now send one?

#### CONCLUSIONS

- (1) a. No, because the first lien filing with respect to these taxes and tax periods occurred prior to January 19, 1999.
- b. Yes.
- (2) a. Only with respect to the 1120 liability for the taxable year ended [REDACTED], for which the [REDACTED] lien was the first lien filed.
- b. No; the notices of alter ego lien are valid and should not be withdrawn.
- c. No.
- d. Yes.
- e. Only the 1120 liability for the taxable year ended [REDACTED].
- f. With respect to all of the liabilities other than the 1120 liability for the taxable year ended [REDACTED] [REDACTED] (with respect to which it was entitled to a CDP notice).
- g. Yes.

## FACTS

Prior to January 19, 1999, the Service filed NFTLs for the 1040 liabilities of [REDACTED] for the [REDACTED], [REDACTED], [REDACTED], and [REDACTED] taxable years.<sup>1</sup> In [REDACTED], a notice of alter ego lien was filed in the same county against [REDACTED] as the alter ego, nominee, or transferee of [REDACTED], with respect to the 1040 liabilities for the years [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The Service did not issue a CDP Notice to [REDACTED] upon the filing of the notice of alter ego, nominee, or transferee lien. Nor did the Service issue a Form 3171 Notice of Additional Federal Tax Lien Filing to [REDACTED] upon the filing of the notice of alter ego, nominee, or transferee lien.

Prior to January 19, 1999, the Service filed NFTLs for the 941 liabilities of [REDACTED] for the quarters ended [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; for the 940 liabilities of [REDACTED] for the periods ended [REDACTED], [REDACTED], and [REDACTED]; and for the 1120 liability for the taxable year ended [REDACTED].<sup>2</sup> In [REDACTED], a NFTL was filed in the same county against [REDACTED], as the alter ego, nominee, or transferee of [REDACTED], as the alter ego, nominee, or transferee of [REDACTED], as the alter ego, nominee, or transferee of [REDACTED], as the alter ego, nominee, or transferee of [REDACTED], with respect to all of the same liabilities. The [REDACTED] notice listed in addition the 1120 liability of [REDACTED] for the taxable year ended [REDACTED]. The Service did not issue a CDP Notice to [REDACTED] upon the filing of the notice of alter ego lien. Nor did the Service issue a Form 3171 Notice of Additional Federal Tax Lien

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<sup>1</sup>This information was not submitted with your request for advice, but there are facsimile NFTLs in our closed legal file numbered [REDACTED] for these taxes and periods. We assume that if there is a facsimile NFTL, there was an actual filing of the lien.

<sup>2</sup>This information was not submitted with your request for advice, but there are facsimile NFTLs in our closed legal file numbered [REDACTED] for these taxes and periods. We again assume that if there is a facsimile NFTL, there was an actual filing of the lien.

Filing to [REDACTED] upon the filing of the notice of alter ego, nominee, or transferee lien.

#### ANALYSIS

Section 6320(a) of the Internal Revenue Code provides that the Service shall notify a taxpayer of the filing of a notice of lien not more than five business days after the day of the filing of the notice of lien. Section 6320(a)(3)(B) provides that the notice shall include the right of the person to request a CDP hearing. However, I.R.C. § 6320(b)(2) provides that a person shall be entitled to only one CDP hearing with respect to the taxable period referenced in such notice.

Because the effective date of § 6320 was January 19, 1999, a taxpayer is entitled to a CDP hearing with respect to only the first lien filed for that tax and taxable period, and then only if that first lien was filed on or after January 19, 1999. See Temp. Treas. Reg. § 301.6320-1T(b), and question and answer B1.

In the present case, all of the liabilities of [REDACTED] on the alter ego lien had already been listed on previous liens. Therefore, [REDACTED] was not entitled to a CDP notice. However, he was entitled to a Form 3171 Notice of Additional Federal Tax Lien Filing with respect to all of his liabilities. See Temp. Treas. Reg. § 301.6320-1T(a), and question and answer A8.

[REDACTED]'s 1120 liability for the taxable year ended [REDACTED] was the only one of [REDACTED]'s liabilities for which the alter ego lien was the first lien filed. All the other liabilities of [REDACTED] on the notice of alter ego lien had already been listed on previous liens. Therefore, [REDACTED] was entitled to a CDP notice only with respect to its 1120 liability for the taxable year ended [REDACTED]. However, with respect to the other liabilities, [REDACTED] was entitled to a Form 3171 Notice of Additional Federal Tax Lien Filing. See Temp. Treas. Reg. § 301.6320-1T(a), and question and answer A8.

PLEASE NOTE: This analysis demonstrates the importance of always determining whether prior notices of lien were filed before deciding whether a CDP notice is appropriate.

The Service's failure to notify [REDACTED] of its right to a CDP hearing for its 1120 liability for the taxable year ended [REDACTED] does not affect the validity or priority of the NFTL. The reason is that the NFTL becomes effective upon filing and the validity and priority of a NFTL is not conditioned

on notification to the taxpayer. When the Service determines that it failed to properly provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and an opportunity to request a CDP hearing. Temp. Treas. Reg. § 301.6320-1T(a), and question and answer A12. Therefore, we advise you to now send a substitute CDP Notice to [REDACTED] with respect to only its 1120 liability for the taxable year ended [REDACTED]. The substitute CDP notice is a Form 3172 with the word "Substitute" manually inserted before the printed line "Notice of Federal Tax Lien Filing and Your Right to a Hearing Under IRC 6320".

When the Service provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Temp. Treas. Reg. § 301.6320-1T(b), and question and answer B3. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice. Temp. Treas. Reg. § 301.6320-1T, and question and answer C8.

The Service is not required to give a CDP notice to a known nominee of, or person holding property of, the taxpayer. See, question and answer A7 of Temp. Treas. Reg. § 301.6320-1T(a). Such person is not entitled to a CDP hearing or an equivalent hearing; however, such person may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. Any such administrative hearing would not be a CDP hearing under § 6320, and any determination or decision resulting from the hearing would not be subject to judicial review. Such person may also take advantage of the administrative procedure included in § 6325(b)(4). Temp. Treas. Reg. § 301.6320-1T(b), and question and answer B5.

In addition to the substitute CDP Notice to [REDACTED] with respect to its 1120 liability for the taxable year ended [REDACTED], we advise that you send Forms 3171 to both [REDACTED] and [REDACTED], with respect to all of

their liabilities not giving rise to a CDP notice.

Please do not hesitate to call if you would like to discuss this matter further.

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cc: Regional Counsel